

REMARKS/ARGUMENTS

Claims 1 and 3-14 are pending. Solely in an effort to advance prosecution, claims 1, 3 and 6 are amended to encompass potentially infringing subject matter. Claims 2, 4 and 5 have been canceled without prejudice or disclaimer of the subject matter they contain. No new matter has been introduced by the above amendments. Applicant does not acquiesce to the propriety of any of the Examiner's rejections and does not disclaim any subject matter to which Applicant is entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997). Further, Applicant reserves the right to file continuing applications to cover disclosed subject matter not encompassed by the currently pending claims.

Applicants and the undersigned representatives expressly thank Examiner Levy for the courtesies extended during the personal interview that he conducted on August 19, 2008, on behalf of Examiner Qazi. A separate record of the substance of the interview is expressed in the above claim amendments and/or the comments set forth below.

DOUBLE PATENTING REJECTION

The Office Action rejects claims 1, 3, 7-11 and 14 under the judicially created doctrine of double patenting over claims 1-9 and specification of Bessette (U.S. Patent No. 6,506,707 ("Bessette")). Although Applicant respectfully submits a terminal disclaimer should not be required, Applicant respectfully requests that this rejection be held in abeyance until an indication of allowable subject matter. If ultimately deemed necessary, appropriate terminal disclaimer(s) will be submitted.

REJECTION UNDER 35 U.S.C. § 103(a)

The Office Action rejects claims 1 and 3-14 under 35 U.S.C. § 103(a), as allegedly being unpatentable over Yu et al. (U.S. Patent No. 5,811,079 (“**Yu**”)), Tworkoski (Journal Reference: “Herbicide Effects of Essential Oil,” *Weed Science*, 50(4):425-431 (2002) (“**Tworkoski**”)) and Faust (www.bioag.com/fulvi-seedtre.html (“**Faust**”)). Applicant respectfully traverses this rejection.

Applicant respectfully submits that Yu, alone or combined with Tworkoski and Faust, does not disclose or suggest the features of the presently claimed invention. In particular, Yu nowhere teaches or suggests a herbicidal compositions or method of using same wherein the herbicidally active ingredient **consists of** clove oil and either thymol, thyme oil, or methyl salicylate, with humic acid, let alone optionally with fulvic acid, as recited in the presently claimed invention. At best, Yu discloses compositions that contain an “active” antimicrobial agent selected from the group consisting of thymol, eucalyptol, methyl salicylate, and mixtures thereof; a pyrophosphate ion; and an orally acceptable carrier (col. 3, lines 17-24). Yu also discloses that essential oils optionally may be included (col. 3, lines 50-54). As such, according to Yu, the “active ingredient” must comprise more ingredients than recited in the present claims.

Tworkoski does not remedy the deficiencies of Yu. Tworski merely discloses that essential oils may be useful as “natural product herbicides’ for organic farming systems” (p. 425). Tworkoski discloses injury rates as a function of concentrations of essential oils and attempts to classify the “active ingredients” within essential oils that cause injury. Tworski does not teach or suggest the specific combination of ingredients recited in the claims. Applicant

respectfully submits that one of ordinary skill in the art reading Yu in view of Tworski would not have been motivated to reach the presently claimed invention.

Faust fails to remedy the deficiencies of either Yu and Tworkoski. Faust merely discloses the use of humic acid and fulvic acid for treating seeds to encourage optimum levels of *growth and production*. Faust does not disclose or suggest combining humic acid or fulvic acid with the plant essential oils, as presently claimed, to obtain an herbicidally active composition, nor does it teach or suggest using humic acid or fulvic acid for use with an herbicidally active composition, as presently claimed. Accordingly, Applicant respectfully submits that one of ordinary skill in the art reading Yu alone or in combination with the teachings of Tworkoski and/or Faust would not have reached the claimed composition and method for using same.

Thus, for at least the above reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

CONCLUSION

If anything further could be done to place the above-captioned patent application in better condition for allowance (i.e., via Examiner's Amendment), then please contact the undersigned attorney at the telephone number listed below.

Applicant(s) hereby requests any extension of time deemed necessary for entry of this submission and any submission filed hereafter in this application or any continuing application(s). Applicant(s) makes a Conditional Petition for any relief available to correct any defect in connection with this filing, or any defect remaining in this application after this filing. The Commissioner is authorized to charge any petition fee or any deficiency in fees filed, or

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Atty. Docket No. : WFG-4380-150

asserted to be filed, or which should have been filed herewith (or with any paper filed hereafter) to Deposit Account No. **14-1140 (please use reference number: WFG-4380-150)** or credit any overpayment of fees to such Deposit Account.

Respectfully submitted,

NIXON & VANDERHYE P.C.

Date: September 24, 2008

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